

REMARKS/ARGUMENTS

Reconsideration and allowance of the present application based on the following remarks are respectfully requested.

Withdrawal of the final rejection and favorable reconsideration and allowance of the present application based on the following remarks are respectfully requested.

A clean copy of the pending claims 1-35 is attached hereto for the convenience of the Examiner.

At the outset, Applicants respectfully submit that the finality of the current Office Action was premature because it does not appear to have taken into consideration the amendments to the claims which were entered upon filing the present Request for Continued Examination.

Specifically, in response to the Final Rejection dated March 23, 2003, Applicants timely filed an amendment on June 17, 2003. The Amendment was not entered, as per the Advisory Action dated July 10, 2003. Accordingly, on July 16, 2003, Applicants timely filed a Request for Continued Examination (RCE), which requested (at box 1.a.i.) that the amendments under 37 CFR 1.116, filed June 17, 2003, be considered and any unentered amendments entered into the application. This does not appear to have been done.

First, the Detailed Action does not refer to this application as an RCE but merely states at paragraph 3, that "[t]his is a Continuation of applicant's earlier Application No. 09/991,653." However, the very next sentence states that "[a]ll claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office Action if they had been entered in the earlier application." This sentence is believed not to be applicable in the context of this RCE application. At a minimum, the current Office Action fails to address any of the claim amendments presented in the Amendment of June 17, 2003 or, explain why the rejection under Section 102(e) based on Putzig *et al*, '714 remains viable.

Accordingly, it is submitted that the finality of the current Office Action should be withdrawn. It is further submitted that the present application is in condition for allowance and, accordingly, favorable reconsideration is requested.

The previously presented amendments, clearly distinguished the claimed invention over the prior art to Putzig *et al* '714, at least for the reason that claim 1 recites the presence of the optional base (see, e.g., claim 2 for the presence of base); and requires that when the base is present it is one of the specifically named classes (inorganic bases, quaternary ammonium compounds) or compounds (mono- or di- ethanolamine); such definition specifically does not include tertiary amines. It is noted that claims 2-4, 16 and 33-35, are all directed to the embodiment wherein the optional base is used in the reaction product.

In contrast, as described at column 3, lines 52-63, the titanium-containing catalyst composition of Putzig *et al* '714, is limited to tertiary amines as the amine component. There is no disclosure of a reaction product wherein an inorganic base or quaternary ammonium compound or monoethanolamine or diethanolamine is reacted with an orthoester or condensed orthoester of Ti, Zr or Al, an alcohol containing at least two hydroxyl groups and an organophosphorus compound containing at least one P-OH group.

Therefore, the exclusion of Putzig's essential tertiary amines from the scope of the pending claims eliminates the relevancy, if any, of Putzig *et al*, as anticipatory of the pending subject matter, since according to this reference only reaction products which include a base which is a tertiary amine compound are disclosed.

Therefore, regardless of whether the disclosure of Putzig at column 5, lines 50-58, supports the conclusion that the disclosed reaction product includes polyhydric alcohol, e.g., ethylene glycol, (as a solvent), the presently pending claims, which do not include the reaction product of a tertiary amine (base compound), are not anticipated by the disclosure of Putzig *et al* '714.

It is submitted, therefore, that the pending claims are not anticipated by Putzig *et al*, '714, and, therefore, the rejection of claims 1-35 under 35 U.S.C. 102(e) should be withdrawn.

Claims 18 and 20 are directed to the embodiment wherein the co-catalyst includes a germanium compound or a tin compound. Since only antimony and cobalt compounds are disclosed in Putzig *et al* '719 as cocatalyst, the subject matters of claims 18 and 20 are not anticipated by Putzig for this additional reason.

Claims 3, 4 and 17 are directed to the embodiment wherein the reaction product includes a 2-hydroxy carboxylic acid. This subject matter is not anticipated by Putzig, *et al* '714, for this additional reason.

At least pending claims 12, 13 and 14 recite particular organophosphorus compounds which are not disclosed by Putzig, *et al*, '714, therefore, these claims are not anticipated by the reference.

Accordingly, each of claims 3, 4, 12, 13, 14, 17, 18 and 20 are believed to be in condition for allowance, independently of the allowability and allowance of claim 1.

For all of the above reasons, reconsideration and withdrawal of the rejection of claims 1-35 as anticipated by Putzig, *et al*, U.S. 6,055,714, is respectfully requested.

Again, since the current Office Action does not address these issues it is believed that the finality of the Office Action was premature. Furthermore, it is believed that the pending claims are allowable over the prior art. However, if for any reason, the claims are not found to be allowable (and issues which cannot be resolved by telephone remain present), a new (and, if new issues are raised, non-final) action should issue.

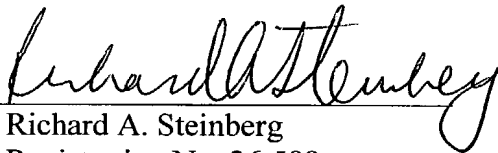
Applicants have not received a copy of the Form PTO-1449, filed by Applicants on December 30, 2002, initialed by the Examiner. Applicants respectfully request that the reference be considered and made of record in the subject application by return of the initialed and dated copy of the PTO Form 1449.

Therefore, all objections and rejections having been addressed, it is respectfully submitted that the present application is in a condition for allowance and a Notice to that effect is earnestly solicited.

Should any issues remain unresolved, the Examiner is encouraged to contact the undersigned attorney for Applicants at the telephone number indicated below in order to expeditiously resolve any remaining issues.

Respectfully submitted,

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Date: January 29, 2004
Attachment: Appendix of Pending Claims